

STATE OF WEST VIRGINIA
THIRTEENTH JUDICIAL CIRCUIT
OFFICE OF THE COURT MONITOR



Report on Patient
Advocacy and Appeals
and
Formal Recommendations

E.H., et al., v. Khan Matin, et al.

June 22, 2012

INTRODUCTION

On April 5, 2012, Petitioners in the case of E.H. et al., Khan Matin, et al, filed a ***Request for Resolution regarding Patient Advocacy and Appeals***. The Court Monitor was asked to conduct a review of the current appeal process for investigation and resolution of patient complaints in the two state psychiatric facilities, William R. Sharpe Hospital and Mildred M. Bateman Hospital.

The Respondents filed a ***Response to Petitioners' Request for Resolution regarding Patient Advocacy and Appeals*** on April 26, 2012, and an Amended Response on May 11, 2012. The Honorable Judge Bloom reviewed the two original documents and issued a Court Order on April 10, 2012, directing the Court Monitor to conduct a review of the patient advocacy investigation and appeal procedures at Sharpe and Bateman Hospitals and to submit a report back to the Court on his findings.

The Court Monitor conducted on-site interviews with the Assistant Chief Executive Officer (CEO) at Bateman Hospital on May 14, 2012 and with the CEO and Assistant CEO at Sharpe Hospital on May 25, 2012, to discuss the patient advocacy investigation and appeal procedures as they are implemented at both hospitals.

In addition, employees with responsibilities relevant to patient appeals working within the Bureau of Behavioral Health and Health Facilities (BHHF) of the Department of Health and Human Resources (DHHR) were interviewed (Elliott Birckhead, David Sanders, Brandy Burnside, Gayle Noullet). Counsel for BHHF, Ms. Wendy Elswick, accompanied all interviewees.

Interviews were also conducted with Legal Aid of West Virginia and patient advocates employed by Legal Aid and stationed at Sharpe and Bateman Hospitals (Bill Albert, Jodie Gardill, Tami Handley, Cindy Kirkhart, and Roonie Reed). In addition, petitioners Dan Hedges and Deborah Weston of Mountain State Justice were also interviewed.

After conducting these interviews and investigating the patient advocacy and appeals procedures at Sharpe and Bateman Hospitals, the Court Monitor hereby issues his Findings and Formal Recommendations.

FINDINGS

■ The CEOs and Assistant CEO at Sharpe and Bateman hospitals agree that the working relationship between the hospital staff and the Legal Aid Advocates has improved significantly in the last twelve months. Meetings which occur

regularly between these agencies have contributed to this outcome. However, unique differences were observed in processing and resolution of grievances between the two institutions.

- The Office of Consumer Affairs and Community Outreach handled grievance appeals for only three months before the responsibility was transferred to the Office of Monitoring and Compliance within BHHF. Prior to 2011-2012, the Bureau rarely received any grievance appeals from the advocates in the hospitals.

- Respondent DHHR notified Legal Aid of West Virginia on February 21, 2012, that all grievance appeals were to be investigated by the Office of Monitoring and Compliance in place of the Office of Consumer Affairs and Community Outreach. The offices investigate the allegations of inappropriate resolution of a grievance on behalf of the Deputy Commissioner, whose statutory duty is to rule on the appeal. The actual ruling on the appeal is issued by the Deputy Commissioner after the allegation is investigated by one of the Offices.

- Information provided by Respondent, DHHR, shows that 21 grievance appeals were filed between July, 2011, and April, 2012. Four appeals were substantiated as having validity, eight were unsubstantiated and nine were denied. “Unsubstantiated” and “denied” represent essentially the same outcome in that the patient’s appeal was not affirmed as credible or justified - the language of the

decision options varied between the Office of Consumer Affairs and Community Outreach and the Office of Monitoring and Compliance. It should be noted that six of the grievance appeals filed were on behalf of one patient and all but one were denied/unsubstantiated.

■ In review of the grievance appeals filed between July of 2011 and April, 2012, two were incorrectly ruled “unsubstantiated” on the grounds that staff neglect did not reach a level equaling a criminal offense. However, both incidents met the definition of neglect in 64 CSR 59, “Behavioral Health Client Rights”. The incidents involved a patient assigned one-on-one supervision who cut herself with a razor and, in a separate incident, swallowed ink from a pen. 64 CSR 59 clearly defines neglect as: “*Any negligent, reckless or intentional failure to meet the needs of a client.....including but not limited to: lack of needed supervision, nutritional deprivation, or failure to implement or update a treatment plan.*” Because the patient in question had been assigned one-on-one supervision by the clinical team, the two grievance appeals should have been ruled as substantiated with regards to neglect.

■ Plaintiff alleges that the offices of the Legal Aid advocates in Bateman Hospital have been physically relocated inappropriately. In fact, the offices have been relocated to make more room for the pharmacy department in the prior

location. This move was discussed with the advocates by the Assistant CEO prior to the move. While the new offices are located away from patient units, the advocates appear content with the change and do not expect it to affect their work.

FORMAL RECOMMENDATIONS

Formal Recommendation #1. In order to offer complete and independent review of grievance appeals, the Court Monitor recommends modification of the current “Order Appointing Court Monitor” dated July 30, 2009, to include an additional step for resolution of patient appeals. Legal Aid of West Virginia shall submit appeals filed on behalf of patients at Sharpe and Bateman hospitals to the Office of the Court Monitor for review and investigation. This process will replace the former process which required that appeals be submitted directly to the Deputy Commissioner of BHHR. Parties are in agreement with this amended procedure. The Respondent DHHR and Petitioners shall collaborate on making the necessary amendments to section *Authority #3* of the Order and forward the revised order to the Court for consideration. This revised procedure shall in no way abrogate any other appeal rights to which the patient is entitled by law, policy or regulation.

If at any time the Court Monitor no longer manages the grievance appeals, the appeals will be resolved by an Office of Monitoring and Compliance investigation that shall be submitted directly to the Commissioner, who shall be responsible for review and determination. Such investigations shall include through onsite investigation.


Formal Recommendation #2. The Court Monitor recommends that Respondent, DHHR, and Legal Aid of West Virginia collaborate on developing a uniform system of advocacy practices at Sharpe and Bateman hospitals that provides for consistency in policy and protocol when addressing patient grievances/appeals within the hospitals. The purpose of such consistency would be to improve communication between the various parties involved and to promote conformity with protocol in each incident investigated.

SUMMARY

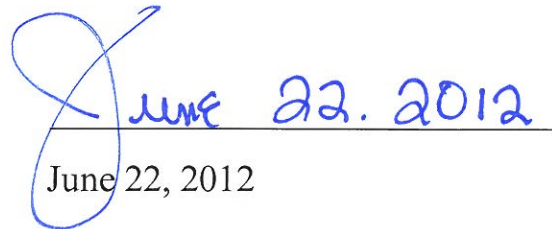
The Court Monitor would like to thank the Respondent, Petitioners and staff from the Legal Aid of West Virginia for their cooperation in providing information for this report. It is apparent that the working relationship between the advocates from Legal Aid of West Virginia and staff from Sharpe and Bateman Hospitals has improved over the past twelve months.

The Court Monitor believes that implementation of the recommended changes in this report will provide for an independent and objective review of all grievance appeals coming from Sharpe and Bateman Hospitals, as is appropriately desired by both Respondent and Plaintiff.

Pursuant to Section 8.02(6)(c) of the West Virginia Behavioral Health Care Delivery System Plan, the Parties may file objections to the Court Monitor's Formal Recommendations within fifteen (15) business days of the date below.



David G. Sudbeck, Court Monitor



June 22, 2012

